

ENTERED

January 31, 2019

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**UNITED STATES OF AMERICA,
Plaintiff/Respondent,**

v.

**FRANCISCO JAVIER DE ANDA,
Defendant/Movant.**

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CRIMINAL NO. 2:18-198-1

ORDER


Pending before the Court is Defendant Francisco Javier De Anda's Request to Be Granted in Forma Pauperis Status and to Be Granted a[n] Attorney for the First Step Act (D.E. 22).

In 2018, Defendant pled guilty to possession with intent to distribute 15.78 kilograms of methamphetamine (ICE) and was sentenced to 121 months' imprisonment. He now moves the Court to appoint him counsel to assist him in seeking a sentence reduction pursuant to the recently-enacted First Step Act of 2018, PL 115-015, _____, 2018, 132 Stat. 015. Unfortunately for Defendant, the First Step Act makes retroactive only the reforms enacted by the Fair Sentencing Act of 2010, which reduced the disparity between crack and powder cocaine sentences. The remaining amendments contained in the Act are not retroactive and thus do not benefit Defendant. There is also no constitutional right to counsel in § 3582 or other post-appellate criminal proceedings. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) ("We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions. Our cases establish that the right to appointed counsel extends to the first

appeal of right, and no further.”); *United States v. Whitebird*, 55 F.3d 1007, 1010–11 (5th Cir. 1995) (no constitutional or statutory right to counsel in § 3582 proceeding).

For the reasons set forth above, Movant’s Request to Be Granted in Forma Pauperis Status and to Be Granted a[n] Attorney for the First Step Act (D.E. 22) is **DENIED.**

ORDERED 1/30/19.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE